

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

May 28, 2008

10:30 a.m.

Room 438, State House

Welcome and introductions

1. Summary of 123rd Legislature's FOA actions in 2008
 - RTK AC recommendations
 - LD 1881, An Act To Improve Transparency and Accountability in Government
 - LD 1923, An Act To Implement the Recommendations of the Right To Know Advisory Committee Creating the Public Access Ombudsman
 - LD 2198, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Training for Elected Officials
 - LD 2212, An Act Concerning Public Records Exceptions
 - Proposed public records exceptions reviews
2. Existing exceptions review process - discussion
 - Assess
 - Changes?
 - Schedule
 - Statutory schedule
 - Requests to revise scheduled reviews
 - Rep. Dawn Hill's request to review 23 MRSA §63 early
 - Mal Leary's request to review teacher credentialing confidentiality early
3. Law School Externship - discussion
 - Assess
 - Continue? Changes?
4. Education and training
 - Podcast update
 - For Legislature elected in November 2008
 - FYI letter to candidates re FOA laws (after June election?)
 - Completion form available on website?
5. Additional FOA issues, projects, activities
 - Social Security Numbers
 - Privileges - 1 MRSA §402, sub-§3, ¶B
 - Chris Parr's proposals, carried over from 2007
 - Law Court decision: Portland School Committee
 - Public hearings outside of Augusta?
 - Possible media informational campaign to publicize training mandates and the importance of educating government officials and the importance of the FOA law
 - ?
6. Scheduling future meetings, subcommittee meetings

Adjourn

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LD 1881

Original Bill

**An Act To Improve Transparency and Accountability
in Government**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

1-B. Governmental body. "Governmental body" means the State; a state agency, including the Office of Information Technology; a political subdivision; or any other governmental entity subject to the provisions of this chapter.

Sec. 2. 1 MRSA §408, sub-§1, as enacted by PL 2003, c. 709, §2, is amended to read:

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable ~~the time~~ period of time after making a request to inspect or copy the public record established in section 412, subsections 2 and 3. A person may request by telephone that a copy of a public record be mailed to that person.

Sec. 3. 1 MRSA §408, sub-§2, as enacted by PL 2003, c. 709, §2, is amended to read:

2. Inspection, translation, copying and mailing scheduled. Inspection, translation and, copying and mailing may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.

Sec. 4. 1 MRSA §408, sub-§3, ¶E is enacted to read:

E. If the requester requests that the public record be mailed, the agency or official may charge a fee to cover the actual cost of mailing the record.

Sec. 5. 1 MRSA §408, sub-§5, as enacted by PL 2003, c. 709, §2, is amended to read:

5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the

Committee Amendment

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 1 MRSA §408, sub-§1, as enacted by PL 2003, c. 709, §2, is amended to read:

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.'

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translation, search, retrieval, compiling and, copying and mailing of the public record if:

- A. The estimated total cost exceeds \$100; or
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

Sec. 6. 1 MRSA §412 is enacted to read:

§ 412. Public record requests

1. Public information officer. Every governmental body shall appoint a public information officer to handle requests for public records under this chapter. A public information officer shall ensure that a sign provided by the Attorney General that contains basic information about the rights of a requester, the responsibilities of the governmental body and the procedures for inspecting or obtaining a copy of a public record under this chapter is prominently displayed where the sign is plainly visible to a member of the public requesting a public record in person and an employee of the governmental body who receives or responds to a request under this chapter. A public information officer or any employee of the governmental body may not inquire into the purpose for the request. In response to a request, a public information officer may inquire only as to the schedule or order of inspection and copying of a public record or a portion of a public record under subsection 2, paragraph D. A public information officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media.

2. Production of public records. A public information officer shall promptly produce a public record for inspection or duplication upon request by a member of the public pursuant to section 408, subsection 1 as provided in this subsection.

A. A member of the public may inspect the public record in the offices of the governmental body in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter. A requester may not remove the original copy of a public record from the office of the governmental body.

B. If the requested public record is unavailable at the time of the request because the record is in active use or in storage, the public information officer shall certify this fact in writing to the requester and set a date and hour within a

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reasonable time when the public record will be available for inspection or copying.

C. If the public information officer is unable to produce the public record within 10 business days after the request for any reason other than in paragraph B, the public information officer shall certify this fact in writing to the requester and set a date and hour within 20 business days after the request when the public record will be available for inspection or copying.

D. If a large public record is requested or multiple public records are requested and the public information officer cannot produce the entire request within 10 business days after the request, the public information officer shall produce the portion of the public record or public records requested as they become available. The requester may waive this requirement and request to see the public record or public records requested as a whole when the entire request becomes available.

3. Inspection. The time to inspect a public record requested under this chapter is subject to the following limitations:

A. A requester must complete an inspection of a public record under subsection 2, paragraph A no later than 10 business days after the record is made available for inspection. If the inspection is not completed within the time limit of this paragraph, the request is deemed to be withdrawn unless the requester files a written request for additional time under paragraph B.

B. A requester may receive an additional 20 business days beyond the time allowed under paragraph A to conduct an inspection if the requester files with the public information officer a written request for additional time. Upon the expiration of the 20 additional business days allowed under this paragraph, a requester may receive an additional 10 days to conduct an inspection if the requester files with the public information officer a second written request for additional time.

C. The time allowed for inspection of a public record under this subsection may be interrupted if the governmental body needs to use the public record. If a governmental body invokes the provisions of this paragraph, the public information officer shall within 20 days of the interruption inform the requester in writing of the date and hour

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that the public record will be available for the inspection to resume. The time allowed for an inspection under this subsection is tolled during the period in which the record is being used by a governmental body under this paragraph.

4. Copying. The right to receive a copy of a public record under section 408, subsection 1 is subject to the following requirements.

A. If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic or magnetic medium. A governmental body shall provide a copy of a public record in the requested medium if:

(1) The governmental body has the technological ability to produce the public record in that medium;

(2) The governmental body is not required to purchase any computer software or hardware to accommodate the request; and

(3) Providing a copy of the public record does not violate the terms of a copyright agreement between the governmental body and a 3rd party.

B. If a governmental body cannot provide a copy of a public record in a requested medium under paragraph A, the governmental body shall provide a paper copy of the public record or a copy in another medium that the governmental body is able to copy and is acceptable to the requester.

5. Repetitious or redundant requests. If a governmental body determines that a requester has made a request for a public record that the governmental body has previously allowed to be inspected by the requester or of which the governmental body has provided a copy to the requester, the governmental body may:

A. Comply with the request; or

B. Decline to comply with the request. If the governmental body declines to comply with a request, the public information officer shall notify the requester in writing of the decision and certify that the request had previously been complied with by the governmental agency. A certification under this paragraph must provide:

(1) A description of the public record that had previously been provided to the

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requester for inspection or copying;

(2) The date the governmental body received the original request;

(3) The date the governmental body complied with the original request;

(4) A certification that no subsequent additions, deletions or corrections have been made to the public record previously made available to the requester for inspection or copying; and

(5) The name, title and signature of the public information officer or the officer's agent.

6. Writ of mandamus. A requester or the Attorney General may file for a writ of mandamus to enforce the provisions of this section against a governmental body. An action under this subsection must be filed in the county in which the main office of the governmental body is located.

Sec. 7. Attorney General to create sign. The Attorney General shall create and distribute a sign pursuant to the Maine Revised Statutes, Title 1, section 412, subsection 1 that displays plainly written basic information about the rights of a requester of a public record, the responsibilities of a governmental body, including the responsibility of a governmental body to abide by the confidentiality laws of this State, and the procedures for inspecting or obtaining a copy of a public record under section 412 that the Attorney General determines is most useful for a requester of a public record and for the employee of the governmental body receiving or responding to the request.

SUMMARY

This bill amends the freedom of access laws in the following ways.

1. It creates a timeline that must be followed to comply with requests for public records.
2. It permits a person to request by telephone that a copy of a public record be mailed to that person.
3. It allows a copy of a requested public record to be mailed if the requester pays for the mailing service.
4. It establishes procedures for requests for inspection or copies of public records.

SUMMARY

Currently a person may make a Freedom of Access request of such breadth that, as a practical and legal matter, an agency's duty to respond to the request is made difficult.

This amendment permits an agency or official to request clarification concerning which public record or public records are being requested.

The amendment also requires an agency or official to acknowledge receipt of the request within a reasonable period of time.

Public Law 2007, Chapter 501

An Act To Improve Transparency and Accountability in Government

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §408, sub-§1, as enacted by PL 2003, c. 709, §2, is amended to read:

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.

Effective June 30, 2008

LD 1923

Original Bill

**An Act To Implement the Recommendations of the
Right To Know Advisory Committee Creating the
Public Access Ombudsman**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §200-I is enacted to read:

§ 200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

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D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and

E. Make recommendations concerning ways to improve public access to public records and proceedings.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a determination whether the records may be released to the public. Records that would be confidential if they were in the possession or custody of a public agency or official are confidential if those records are in the possession of the ombudsman. The ombudsman shall maintain the confidentiality of confidential records and information provided to the ombudsman.

5. Report. Beginning in 2008, the ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received;

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;

C. The number of complaints received concerning respectively public records and public meetings;

D. The number of complaints received concerning respectively:

(1) State agencies;

Amend the bill in section 1 in §200-I by striking out all of subsection 4 (page 1, lines 28 to 33 in L.D.) and inserting the following:

'4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.'

Amend the bill in section 1 in §200-I in subsection 5 in the first line (page 1, line 34 in L.D.) by striking out the following: "Beginning in 2008, the" and inserting the following: "The"

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(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities;

E. The number of inquiries and complaints that were resolved;

F. The total number of written advisory opinions issued and pending; and

G. Recommendations concerning ways to improve public access to public records and proceedings.

Amend the bill in section 1 in §200-I by inserting at the end the following:

'6. Repeal. This section is repealed June 30, 2009.'

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. Pilot project. Notwithstanding the Maine Revised Statutes, Title 5, section 200-I, subsection 1, the Department of the Attorney General may establish the Public Access Division and appoint the Public Access Ombudsman as a pilot project if funding is available.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds for a part-time Assistant Attorney General position and general operating expenses required to carry out the purposes of this Act.

GENERAL FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	\$27,941	\$39,458
All Other	\$1,718	\$1,290

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Allocates funds for a part-time Assistant Attorney General position and general operating expenses required to carry out the purposes of this Act.

FEDERAL EXPENDITURES FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	\$0	\$39,458
All Other	\$0	\$1,718

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GENERAL FUND	\$29,659	\$40,748
TOTAL		

SUMMARY

This bill is introduced by the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G and is based on the Right To Know Advisory Committee's recommendation to establish a Public Access Ombudsman.

This bill establishes the Public Access Ombudsman within the Department of the Attorney General. The ombudsman will provide information and educational materials and programs to the public, as well as public agencies and officials, in cooperation with the Right To Know Advisory Committee. The ombudsman will respond to informal inquiries, resolve freedom of access complaints when possible and issue advisory opinions concerning the State's freedom of access laws. The ombudsman is not permitted to issue an advisory opinion on an issue that is the subject of a lawsuit filed under the freedom of access laws. The ombudsman must make the advisory opinions available to the public once they are distributed to the persons requesting the advisory opinion and the parties involved. The ombudsman will make recommendations concerning ways to improve public access to public records and public proceedings.

The ombudsman may request the assistance of any public agency or official in carrying out these responsibilities. The ombudsman may access records that a public agency or official believes are confidential in order to determine whether the records may be released to the public. Records that would be confidential if they were in the possession or custody of a public agency or official are confidential if those records are in the possession of the ombudsman. The ombudsman shall maintain the confidentiality of confidential records and information provided to the ombudsman.

Beginning in March 2008, the ombudsman will report annually to the Legislature and the Right To Know Advisory Committee regarding the ombudsman's activities and the inquiries and complaints received. The report must also include recommendations concerning ways to improve public access to public records and proceedings.

FEDERAL	\$0	\$41,176
EXPENDITURES		
FUND TOTAL		

SUMMARY

This amendment:

1. Revises the establishment of the Public Access Division within the Department of the Attorney General and the appointment of the Public Access Ombudsman. It authorizes the Attorney General to establish the Public Access Division and appoint the Public Access Ombudsman as a pilot project if funding is available;

2. Clarifies that the Public Access Ombudsman makes nonbinding recommendations concerning the release of records to the public and clarifies the manner in which those records must be handled;

3. Deletes the requirement that the Public Access Ombudsman make an annual report in 2008; and

4. Repeals the provisions establishing the Public Access Division and the Public Access Ombudsman June 30, 2009.

Public Law 2007, Chapter 603

An Act To Implement the Recommendations of the Right To Know Advisory Committee Creating the Public Access Ombudsman

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §200-I is enacted to read:

§ 200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and

E. Make recommendations concerning ways to improve public access to public records and proceedings.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received;

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;

C. The number of complaints received concerning respectively public records and public meetings;

D. The number of complaints received concerning respectively:

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- (1) State agencies;
- (2) County agencies;
- (3) Regional agencies;
- (4) Municipal agencies;
- (5) School administrative units; and
- (6) Other public entities;

E. The number of inquiries and complaints that were resolved;

F. The total number of written advisory opinions issued and pending; and

G. Recommendations concerning ways to improve public access to public records and proceedings.

6. Repeal. This section is repealed June 30, 2009.

Sec. 2. Pilot project. Notwithstanding the Maine Revised Statutes, Title 5, section 200-I, subsection 1, the Department of the Attorney General may establish the Public Access Division and appoint the Public Access Ombudsman as a pilot project if funding is available.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Allocates funds for a part-time Assistant Attorney General position and general operating expenses required to carry out the purposes of this Act.

FEDERAL EXPENDITURES FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	\$0	\$39,458
All Other	\$0	\$1,718
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$41,176

Effective July 18, 2008.

LD 2198

Original Bill

(no amendments)

**An Act To Implement the Recommendations of the
Right To Know Advisory Committee Concerning
Training for Elected Officials**

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Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the training of elected officials pursuant to the Maine Revised Statutes, Title 1, section 412 must begin July 1, 2008, and that law needs clarification; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §411, sub-§6, ¶D, as enacted by PL 2005, c. 631, §1, is amended to read:

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;

Sec. 2. 1 MRSA §412, as enacted by PL 2007, c. 349, §1, is amended to read:

§ 412. Public records and proceedings training for certain elected officials

1. Training required. Beginning July 1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

2. Training course; minimum requirements. The training course under subsection 1 must be approved

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~~by the advisory committee. The training must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:~~

- ~~A. The general legal requirements of this chapter regarding public records and public proceedings;~~
- ~~B. Procedures and requirements regarding complying with a request for a public record under this chapter; and~~
- ~~C. Penalties and other consequences for failure to comply with this chapter.~~

~~An elected official meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.~~

~~**3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official shall ~~send~~make a written or an electronic notification ~~to the advisory committee~~record attesting to the fact that the training has been completed. The advisory committee shall maintain a record of those elected officials who have completed the training required by this section and make that record available to the public in accordance with the requirements of this chapter. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected.~~

~~**4. Application.** This section applies to the following elected officials:~~

- ~~A. The Governor;~~
- ~~B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;~~
- ~~C. Members of the Legislature elected after November 1, 2008; and~~
- ~~D. An elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or~~

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legislative powers.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill amends the law regarding training requirements for elected officials, as enacted by Public Law 2007, chapter 349.

This bill maintains the minimum content requirements for the training programs but provides that an elected official who completes a training program that contains all the information contained under the Frequently Asked Questions heading on the State's Freedom of Access law website meets the minimum requirements. Current law directs the Right To Know Advisory Committee to approve the training programs. This bill eliminates that role.

Current law requires an elected official to send notice of the completion of the required training to the advisory committee. This bill requires the elected official to make a record of the completion of the training and either keep it or file it with the public entity to which that official was elected. The record of completion is a public record. The advisory committee is directed to recommend to the Legislature a process for collecting the completion data and making it available to the public.

This bill addresses the application of the

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mandatory training requirement to elected officials. Current law applies beginning July 1, 2008. This bill revises the application to Legislators to begin for Legislators elected after November 1, 2008. This avoids training in July 2008 those Legislators who will not be reelected the following November. This bill also specifically spells out the elected officials who are subject to the training and provides a general description of those who, as part of the duties of their offices, exercise executive or legislative powers as elected officials of regional or other political subdivisions.

Public Law 2007, Chapter 576

An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Training for Elected Officials

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the training of elected officials pursuant to the Maine Revised Statutes, Title 1, section 412 must begin July 1, 2008, and that law needs clarification; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §411, sub-§6, ¶D, as enacted by PL 2005, c. 631, §1, is amended to read:

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;

Sec. 2. 1 MRSA §412, as enacted by PL 2007, c. 349, §1, is amended to read:

§ 412. Public records and proceedings training for certain elected officials

1. Training required. Beginning July 1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

2. Training course; minimum requirements. The training course under subsection 1 must be ~~approved by the advisory committee. The training must be~~ designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

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C. Penalties and other consequences for failure to comply with this chapter.

An elected official meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official shall ~~send~~make a written or an electronic ~~notification to the advisory committee~~record attesting to the fact that the training has been completed. ~~The advisory committee shall maintain a record of those elected officials who have completed the training required by this section and make that record available to the public in accordance with the requirements of this chapter.~~The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected.

4. Application. This section applies to the following elected officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008; and

~~D. An elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or legislative powers.~~

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 7, 2008.

LD 2212

Original Bill

Committee Amendment

An Act Concerning Public Records Exceptions
Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 1 MRSA §402, sub-§3, ¶O, as enacted by PL 2005, c. 381, §3, is amended to read:

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee of ~~a governmental entity~~, as defined in Title 14, section 8102, subsection 21, except that "public employee" does not include elected officials.

Sec. 2. 3 MRSA §997, as amended by PL 2003, c. 673, Pt. GGGG, §9, is further amended to read:

§ 997. Conduct and issuance of program evaluation reports

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter.

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection ~~33-A~~. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

Amend the bill by striking out all of section 2.

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2. Submission of final report to committee. The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records. The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office.

3. Confidentiality. ~~The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and exempt from disclosure pursuant to Title 1, chapter 13. All other records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.~~

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3-A. Confidentiality of working papers.

Except as provided in this subsection, working papers that support reports released pursuant to subsection 2, or that are related to any program evaluation no longer being actively pursued, are confidential and exempt from disclosure pursuant to Title 1, chapter 13. Working papers may not be disclosed to any person, including the Legislative Council or an agent or representative of the Legislative Council. For the purposes of this subsection, "working papers" means all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report. In accordance with subsection 4, all records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure also remain exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation as long as disclosure will not prejudice the program evaluation and the working papers remain confidential in the hands of the receiving entity. After the release of the final program evaluation report, the director has sole discretion to release working papers, as long as they remain confidential in the hands of the receiving entity, as necessary to:

- A. The department, commission or agency that was subject to the audit or investigation;
- B. Federal agencies providing grants to the audited entity under paragraph A;
- C. Law enforcement agencies for the purpose of criminal law enforcement or investigations;
- D. Other auditors in their work reviewing the office; or
- E. Other departments of audit existing within State Government.

This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.

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4. Information available to office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or agreements to protect information considered to be confidential or privileged. The office shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program

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evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

5. Confidentiality of working papers. ~~Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.~~

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary.

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

Sec. 3. 4 MRSA §17, sub-§3, as amended by PL 1987, c. 776, §1, is further amended to read:

3. Investigate complaints. Investigate complaints with respect to the operation of the courts and relating to court and judicial security. Notwithstanding any other provision of law, such complaints and investigative files that relate to court and judicial security are confidential. Nothing in this section precludes dissemination of such information to another criminal justice agency;

Sec. 4. 4 MRSA §809, as amended by PL 1977, c.

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696, §27, is repealed.

Amend the bill by inserting after section 4 the following:

‘Sec. 5. 5 MRSA §1976, sub-§2, as enacted by PL 2001, c. 388, §14, is amended to read:

2. Public records. Except as provided in subsection 1, any document created or stored on a State Government computer ~~is a public record and~~ must be made available in accordance with Title 1, chapter 13 ~~unless specifically exempted by that chapter.’~~

Sec. 5. 5 MRSA §7070, sub-§1, ¶A, as enacted by PL 1989, c. 402, §1, is amended to read:

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Sec. 6. 5 MRSA §7070, sub-§2, ¶D-1, as enacted by PL 1997, c. 124, §2, is amended to read:

D-1. Personal information pertaining to the employee’s race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; ~~home telephone number and home address~~personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

Sec. 7. 5 MRSA §15321, sub-§3, ¶D, as amended by PL 2005, c. 19, §4, is further amended to read:

D. The records and proceedings of the technology centers are ~~not considered~~ public for the purposes of Title 1, chapter 13 except that the following

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records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by a technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this paragraph;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings.

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process;

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(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with a monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

Amend the bill by inserting after section 7 the following:

‘**Sec. 8. 7 MRSA §607, sub-§5-A**, as enacted by PL 2005, c. 620, §6, is amended to read:

5-A. Confidentiality. Notwithstanding Title 1, section 402, data submitted pursuant to subsections 3, 4 and 5 that have been determined confidential by the Administrator of the United States Environmental Protection Agency in accordance with 7 United States Code, Section 136h (2007) are confidential and may not be available for public inspection.’

Sec. 8. 7 MRSA §2992-A, sub-§1, ¶C, as corrected by RR 1997, c. 2, §30, is amended to read:

C. Notwithstanding paragraphs A and B:

(1) Employees of the board, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and

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the state employee health insurance program under Title 5, chapter 13, subchapter ~~H~~2;

(2) All meetings and records of the board are subject to the provisions of Title 1, chapter 13, subchapter ~~H~~1, except that, by majority vote of those members present recorded in a public session, records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the board;

(3) For the purposes of the Maine Tort Claims Act, the board is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the board pursuant to chapter 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the board are governed by the conflict of interest provisions set forth in Title 5, section 18.

Sec. 9. 7 MRSA §2998-B, sub-§1, ¶C, as corrected by RR 1997, c. 2, §31, is amended to read:

C. Notwithstanding paragraphs A and B:

(1) Employees of the council, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter ~~H~~2;

(2) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter ~~H~~1, except that, by majority vote of those members present

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recorded in a public session, records and meetings of the ~~board~~council may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council;

(3) For the purposes of the Maine Tort Claims Act, the council is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the council pursuant to chapters 603 and 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18.

Sec. 10. Review and recommendations concerning specific statutory provisions. Pursuant to the Maine Revised Statutes, Title 1, section 432, subsection 1, the Joint Standing Committee on Judiciary shall review the recommendations of the Right To Know Advisory Committee established in Title 1, section 411 concerning the following statutes and by December 1, 2008 shall develop recommendations to continue, modify or repeal each public record exception or to revise language to clarify the existing public record exceptions:

1. Title 1, section 402, subsection 3, paragraph B;
2. Title 1, section 402, subsection 3, paragraph N;
3. Title 5, section 1545;
4. Title 5, section 1976, subsection 2;
5. Title 5, section 22009, subsection 2;
6. Title 7, section 607, subsection 5-A, as applied to Title 7, section 607, subsection 4;
7. Title 7, section 1052;
8. Title 7, sections 4204 and 4205;
9. Title 9-B, section 226; and
10. Title 9-B, section 252.

Amend the bill by striking out all of section 10 and inserting the following:

'Sec. 10. 9-B MRSA §226, sub-§1, as enacted by PL 1975, c. 500, §1, is amended to read:

1. Requirement. Except as provided in subsections 2 and 3, the following information derived by or communicated to the superintendent or to any employee of the bureau ~~shall be confidential and may not be disclosed or made public;~~

A. Information designated confidential under federal law or regulations;

B. Examination and investigative working papers

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and reports;

C. Personal identifying information of consumers and other complainants who contact the bureau;

D. Personal identifying information of the governing body organizers and the proposed investors of a financial institution contained in an application filed with the bureau;

E. Privileged trade secrets, detailed business plans and commercial or financial information that, if disclosed to the public, would cause detriment to the financial institution; and

F. Information other than that in paragraphs A to E for which the superintendent determines that confidential treatment is necessary and appropriate for the supervision of a specific financial institution or for state-chartered financial institutions in general.

Sec. 11. 9-B MRSA §226, sub-§3, ¶F, as amended by PL 1995, c. 628, §14, is further amended to read:

F. To those persons or entities necessary in order to comply with provisions of this Title relating to legal or regulatory proceedings and to disclosure or publication of certain applications, reports, statistics and information.

Sec. 12. 9-B MRSA §226, sub-§4, as enacted by PL 1975, c. 500, §1, is repealed and the following enacted in its place:

4. Penalty. A person who intentionally or knowingly discloses confidential information in violation of this section commits a Class E crime.

Sec. 13. 20-A MRSA c. 304-A is enacted to read:

CHAPTER 304-A
BAXTER COMPENSATION AUTHORITY
RECORDS

§ 7451. Baxter Compensation Authority records confidential

1. Application. This section governs all records of the former Baxter Compensation Authority, as established under former Title 5, section 22002, referred to in this section as “the authority.” These records may be released only with the approval of the Attorney General as authorized in this section.

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2. Designation of information. All records of the authority that are in any way related to a claimant or a claimant's family are confidential, except that the following information is a public record:

- A. The claimant's name;
- B. The claimant's eligibility for compensation;
- C. The amount of the compensation award, if any; and
- D. A summary of the compensation panel's rationale in deciding eligibility and the compensation award amount.

All information other than that described in paragraphs A to D supporting or corroborating a claim continues to be confidential until those records are destroyed. This confidential information may be released only to the Attorney General, the Governor and the chairs of the joint standing committee of the Legislature having jurisdiction over judiciary matters and remains confidential in their custody.

Sec. 14. Retroactivity. That section of this Act that enacts the Maine Revised Statutes, Title 20-A, chapter 304-A applies retroactively to July 1, 2007.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This bill implements the recommendations of the Right To Know Advisory Committee regarding statutory changes to existing public records exceptions.

Under current law, personal contact information concerning public employees is not a public record. This bill clarifies that the exception also applies to personal contact information of voluntary appointees serving in State Government positions without compensation by cross-referencing the definition of "employee" in the Maine Tort Claims Act. The bill also addresses a potential conflict with this exception and the law governing state employee personnel records to clarify that personal contact information of state employees and applicants for state employment is not a public record.

The bill clarifies the law governing the confidentiality of reports, records and working papers of the Office of Program Evaluation and Government Accountability. The bill clarifies that final program evaluation reports are public records and subject to disclosure. With regard to other records and working

SUMMARY

This amendment deletes the section of the bill that directs the Joint Standing Committee on Judiciary to review specific public records exceptions and report by December 1, 2008 with recommendations. The committee completed the review and includes the recommendations in this amendment.

This amendment revises the law governing documents created or stored on a State Government computer to clarify that such documents must be made available in accordance with the freedom of access laws. This clarifies that documents created or stored on a State Government computer are public records if they meet the definition of "public record" contained in the Maine Revised Statutes, Title 1, chapter 13.

This amendment narrows the confidentiality of pesticide test results requested by the Board of Pesticides Control to that information that has been determined to be confidential by the Administrator of the United States Environmental Protection Agency in accordance with federal law.

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papers, the bill provides that those working papers and records that support reports or are related to any program evaluation are confidential and may not be disclosed except at the discretion of the Director of the Office of Program Evaluation and Government Accountability in certain circumstances. Prior to the release of a program evaluation report, the bill gives the director discretion to disclose working papers to the agency subject to the evaluation when disclosure will not prejudice the program evaluation and the agency agrees to keep the working papers confidential. After the release of a program evaluation report, the bill gives the director discretion to disclose working papers as necessary and as long as the working papers remain confidential to the state agency subject to the program evaluation or any federal agency providing funding to that agency, to law enforcement agencies for the purposes of criminal investigation, to other state audit agencies and to other auditors reviewing the work of the office.

The bill narrows the current exception providing confidentiality to complaint and investigative files maintained by the State Court Administrator to only those complaints and investigations that are related to court and judicial security.

The bill repeals the exception making confidential any investigations by the Attorney General of the unauthorized practice of law. Title 16, section 614 addresses when investigative records or information held by the Attorney General for any type of investigation may be disclosed to the public. The bill repeals Title 4, section 809, dealing with investigations by the Attorney General, since it is not necessary.

The bill amends the provisions concerning confidential information within state employee personnel records to make the provisions consistent with the Title 1 language designating personal contact information of employees as not public records.

The bill narrows the exception in current law that designates the records and proceedings of technology centers as not public for the purposes of the freedom of access laws. The bill provides that the records and proceedings are public except for certain records designated as confidential, including records that are confidential by other provisions of law, financial statements, credit reports, tax returns and records that contain proprietary information or trade secrets. The approach taken in the bill is modeled on a similar exception in current law for records of the Maine Technology Institute.

The bill requires that the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council take a publicly recorded vote supported by a majority of the members before closing meetings or records to the public as allowed under current law when public disclosure of the subject matter would adversely affect the competitive

This amendment includes language to continue the confidentiality of records of the former Baxter Compensation Authority consistent with the Baxter Compensation Authority statutes that were repealed upon the termination of the program. That provision is retroactive to the date the Baxter Compensation Authority statutes were repealed to ensure the continuity of protection of the records. The information may be released to the Attorney General, the Governor and the chairs of the joint standing committee of the Legislature having jurisdiction over judiciary matters and must remain confidential in their custody.

This amendment reverses the presumption that information derived by or communicated to the Bureau of Financial Institutions may not be disclosed to the public. This amendment provides that specific categories of information are confidential and may not be disclosed or made public. The existing exceptions to the prohibition on disclosure are retained. The penalty for disclosure in violation of the statute is updated, and the culpable mental state of "intentionally or knowingly" is added.

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position of the milk industry of the State or segments of that industry.

The bill directs the Joint Standing Committee on Judiciary to review the recommendations of the Right To Know Advisory Committee about specific statutory provisions and make recommendations about whether the public record exceptions contained in those provisions should be maintained, modified, repealed or clarified. These provisions were identified in the second annual report of the Right To Know Advisory Committee as raising issues for which more information should be provided by interested parties before final recommendations can be made.

Public Law 2007, Chapter 597

An Act Concerning Public Records Exceptions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§3, ¶O, as enacted by PL 2005, c. 381, §3, is amended to read:

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee of a governmental entity, as defined in Title 14, section 8102, subsection 21, except that "public employee" does not include elected officials.

Sec. 2. 4 MRSA §17, sub-§3, as amended by PL 1987, c. 776, §1, is further amended to read:

3. Investigate complaints. Investigate complaints with respect to the operation of the courts and relating to court and judicial security. Notwithstanding any other provision of law, ~~such~~ complaints and investigative files that relate to court and judicial security are confidential. Nothing in this section precludes dissemination of such information to another criminal justice agency;

Sec. 3. 4 MRSA §809, as amended by PL 1977, c. 696, §27, is repealed.

Sec. 4. 5 MRSA §1976, sub-§2, as enacted by PL 2001, c. 388, §14, is amended to read:

2. Public records. Except as provided in subsection 1, any document created or stored on a State Government computer is a public record and must be made available in accordance with Title 1, chapter 13 ~~unless specifically exempted by that chapter.~~

Sec. 5. 5 MRSA §7070, sub-§1, ¶A, as enacted by PL 1989, c. 402, §1, is amended to read:

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Sec. 6. 5 MRSA §7070, sub-§2, ¶D-1, as enacted by PL 1997, c. 124, §2, is amended to read:

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D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; ~~home telephone number and home address~~personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

Sec. 7.5 MRSA §15321, sub-§3, ¶D, as amended by PL 2005, c. 19, §4, is further amended to read:

D. The records and proceedings of the technology centers are ~~not considered~~ public for the purposes of Title 1, chapter 13-except that the following records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by a technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this paragraph;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings.

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process;

(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with a monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

Right to Know Advisory Committee
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(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

Sec. 8. 7 MRSA §607, sub-§5-A, as enacted by PL 2005, c. 620, §6, is amended to read:

5-A. Confidentiality. Notwithstanding Title 1, section 402, data submitted pursuant to subsections 3, 4 and 5 that have been determined confidential by the Administrator of the United States Environmental Protection Agency in accordance with 7 United States Code, Section 136h (2007) are confidential and may not be available for public inspection.

Sec. 9. 7 MRSA §2992-A, sub-§1, ¶C, as corrected by RR 1997, c. 2, §30, is amended to read:

C. Notwithstanding paragraphs A and B:

(1) Employees of the board, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter H2;

(2) All meetings and records of the board are subject to the provisions of Title 1, chapter 13, subchapter H1, except that, by majority vote of those members present recorded in a public session, records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the board;

(3) For the purposes of the Maine Tort Claims Act, the board is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the board pursuant to chapter 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the board are governed by the conflict of interest provisions set forth in Title 5, section 18.

Sec. 10. 7 MRSA §2998-B, sub-§1, ¶C, as corrected by RR 1997, c. 2, §31, is amended to read:

C. Notwithstanding paragraphs A and B:

(1) Employees of the council, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter H2;

(2) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter H1, except that, by majority vote of those members present recorded in a public session, records and meetings of the ~~board~~council may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council;

(3) For the purposes of the Maine Tort Claims Act, the council is a governmental entity and its employees

Right to Know Advisory Committee
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are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the council pursuant to chapters 603 and 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18.

Sec. 11. 9-B MRSA §226, sub-§1, as enacted by PL 1975, c. 500, §1, is amended to read:

1. Requirement. Except as provided in subsections 2 and 3, the following information derived by or communicated to the superintendent or to any employee of the bureau shall be confidential and may not be disclosed or made public:

A. Information designated confidential under federal law or regulations;

B. Examination and investigative working papers and reports;

C. Personal identifying information of consumers and other complainants who contact the bureau;

D. Personal identifying information of the governing body organizers and the proposed investors of a financial institution contained in an application filed with the bureau;

E. Privileged trade secrets, detailed business plans and commercial or financial information that, if disclosed to the public, would cause detriment to the financial institution; and

F. Information other than that in paragraphs A to E for which the superintendent determines that confidential treatment is necessary and appropriate for the supervision of a specific financial institution or for state-chartered financial institutions in general.

Sec. 12. 9-B MRSA §226, sub-§3, ¶F, as amended by PL 1995, c. 628, §14, is further amended to read:

F. To those persons or entities necessary in order to comply with provisions of this Title relating to legal or regulatory proceedings and to disclosure or publication of certain applications, reports, statistics and information.

Sec. 13. 9-B MRSA §226, sub-§4, as enacted by PL 1975, c. 500, §1, is repealed and the following enacted in its place:

4. Penalty. A person who intentionally or knowingly discloses confidential information in violation of this section commits a Class E crime.

Sec. 14. 20-A MRSA c. 304-A is enacted to read:

CHAPTER 304-A
BAXTER COMPENSATION AUTHORITY RECORDS

§ 7451. Baxter Compensation Authority records confidential

1. Application. This section governs all records of the former Baxter Compensation Authority, as established under former Title 5, section 22002, referred to in this section as “the authority.” These records may be released only with the approval of the Attorney General as authorized in this section.

2. Designation of information. All records of the authority that are in any way related to a claimant or a claimant’s family are confidential, except that the following information is a public record:

Right to Know Advisory Committee
2008 bills considered by 123rd Legislature

A. The claimant's name;

B. The claimant's eligibility for compensation;

C. The amount of the compensation award, if any; and

D. A summary of the compensation panel's rationale in deciding eligibility and the compensation award amount.

All information other than that described in paragraphs A to D supporting or corroborating a claim continues to be confidential until those records are destroyed. This confidential information may be released only to the Attorney General, the Governor and the chairs of the joint standing committee of the Legislature having jurisdiction over judiciary matters and remains confidential in their custody.

Sec. 15. Retroactivity. That section of this Act that enacts the Maine Revised Statutes, Title 20-A, chapter 304-A applies retroactively to July 1, 2007.

Effective July 18, 2008.

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**Proposed Public Records Exceptions Review by Judiciary Committee
123rd Legislature, 2008**

LD	Documents reviewed	Final disposition
LD 1650, An Act to Amend the Laws Concerning Genetically Engineered Plants and Seeds	Committee Amendment "B" (not adopted) and House Amendment "A" to Committee Amendment "A" (not adopted)	PL 2007, c. 602
LD 1902, An Act to Bring Maine into Compliance with Federal Law Regarding Purchases of Firearms by Persons Found to Be a Danger to Themselves or Others	Committee Amendment "A" (not adopted) and Committee Amendment "B"	PL 2007, c. 670
LD 1951, An Act to Create the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Committee Amendment "A"	PL 2007, c. 609
LD 2070, An Act to Improve Campaign Finance Laws and Their Administration	Committee Amendment "A"	PL 2007, c. 571
LD 2191, An Act to Designate Certain Application and Licensing Information Provided to the State Harness Racing Commission as Confidential	LR 3471	PL 2007, c. 483
LD 2219, An Act to Promote Transparency and Accountability in Campaigns and Governmental Ethics	Committee Amendment "A" (not adopted) and Committee Amendment "B"	PL 2007, c. 642
LD 2272, An Act Regarding the State Government Evaluation Act Review of the Maine State Housing Authority	LR 3572	PL 2007, c. 562
LD 2289, An Act Making Supplemental Appropriations and Allocations . . . (formerly LD 2173)	Part S	PL 2007, c. 539, Part S
LD 2291, An Act to Amend Teacher Confidentiality Laws	Committee Amendment "B" (not adopted)	PL 2007, c. 666

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1 MRSA §433. Schedule for review of exceptions to public records

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;
- (15) Title 20-A; and
- (16) Title 21-A.

Existing Public Records Exceptions Subject to review by 2010

May 27, 2008

	Title	Section	Sub-section	Subject matter
1	10	1079	4	Title 10, section 1079, subsection 4, relating to persons who have family development accounts
2	10	1109	4	Title 10, section 1109, subsection 4, relating to information reported to the Attorney General concerning acquisition of gasoline and heating oil assets
3	10	1392	2	<i>Title 10, section 1392, subsection 2, relating to information reported to the consumer arbitration administrator concerning reported consumer arbitration (PL 2007, c. 250)</i>
4	10	1495-G	3	Title 10, section 1495-G, subsection 3, relating to payroll processing bonding
5	10	1675		Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act
6	10	391	2, 3	Title 10, section 391, subsections 2 and 3, relating to the Small Enterprise Growth Program
7	10	8002	10	Title 10, section 8002, subsection 10, relating to information provided to the Commissioner of Professional and Financial Regulation
8	10	8003-B	1, 2-A	Title 10, section 8003-B, subsections 1 and 2-A, relating to complaints and investigations and client records of boards and commissions within or associated with the Department of Professional and Financial Regulation
9	10	9012	1	Title 10, section 9012, subsection 1, relating to information provided to the Department of Professional and Financial Regulation, Manufactured Housing Board
10	10	945-J		Title 10, section 945-J, relating to the Maine International Trade Center
11	10	975-A	2, 3	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine
12	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch
13	12	12907	8	Title 12, section 12907, subsection 8, relating to whitewater outfitters and affiliated outfitter records
14	12	1827	3	Title 12, section 1827, subsection 3, relating to Department of Conservation records concerning camper reservations at state parks
15	12	550-B	6	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas
16	12	6072	10	Title 12, section 6072, subsection 10, relating to aquaculture lease seeding and harvesting reports
17	12	6072-A	17-A	Title 12, section 6072-A, subsection 17-A, relating to aquaculture leasing research and development
18	12	6077	4	Title 12, section 6077, subsection 4, relating to the aquaculture monitoring

Existing Public Records Exceptions Subject to review by 2010

May 27, 2008

	Title	Section	Sub-section	Subject matter
				program
19	12	6078-A	1	Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders
20	12	6082		<i>Title 12, section 6082, relating to aquaculture operations in other jurisdictions obtained from other state, federal or foreign government agencies (PL 2007, c. 212)</i>
21	12	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics
22	12	6173-A	1	Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information submitted under the Maine Working Waterfront Access Pilot Project
23	12	6310	3	Title 12, section 6310, subsection 3, relating to medical information pertaining to lobster and crab fishing license denials
24	12	6431-F	3	Title 12, section 6431-F, subsection 3, relating to medical information pertaining to trap tag denials
25	12	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council
26	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
27	12	8611	1	Title 12, section 8611, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
28	12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas
29	12	8883-B	8	Title 12, section 8883-B, subsection 8, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
30	12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information
31	13	1957	8	Title 13, section 1957, subsection 8, relating to the members of associations of agricultural producers and purchasing information
32	14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms
33	14	1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors
34	14	1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information
35	14	164-A	3	Title 14, section 164-A, subsection 3, relating to the Maine Assistance

Existing Public Records Exceptions Subject to review by 2010

May 27, 2008

	Title	Section	Sub-section	Subject matter
				Program for Lawyers
36	15	101-C	3	Title 15, section 101-C, subsection 3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct
37	15	393	4-A	<i>Title 15, section 393, subsection 4-A, paragraph G, relating to applications for relief and information of record concerning prohibition of firearm possession for mental health reasons (PL 2007, c. 670)</i>
38	15	3009	2	Title 15, section 3009, subsection 2, relating to the reintegration of a juvenile into school
39	15	3301	6-A	Title 15, section 3301, subsection 6-A, relating to information about a juvenile against whom a juvenile petition has not been filed
40	15	3308	7	Title 15, section 3308, subsection 7, relating to juvenile proceedings
41	16	614	2	Title 16, section 614, subsection 2, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources
42	17-A	1176		Title 17-A, section 1176, relating to information that pertains to current address or location of crime victims
43	18-A	2-901		Title 18-A, section 2-901, relating to wills deposited with the Probate Court
44	18-A	9-304	(a-1)	Title 18-A, section 9-304, subsection (a-1), relating to background checks for adoptions ordered by the Probate Court
45	18-A	9-304	(a-2)	Title 18-A, section 9-304, subsection (a-2), relating to background checks initiated by the Department of Health and Human Services
46	18-A	9-308	(c)	Title 18-A, section 9-308, subsection (c), relating to final adoption decrees
47	18-A	9-310		Title 18-A, section 9-310, relating to adoption records concerning adoptions decreed on or after August 8, 1953
48	19-A	1565	4	Title 19-A, section 1565, subsection 4, relating to Social Security numbers in paternity actions
49	19-A	1653	6	Title 19-A, section 1653, subsection 6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse
50	19-A	2006	10	Title 19-A, section 2006, subsection 10, relating to social security numbers in child support actions
51	19-A	2152	11	Title 19-A, section 2152, subsection 11, relating to information collected in child support enforcement and medical support recoupment
52	19-A	2158	6	Title 19-A, section 2158, subsection 6, relating to records of child support obligors provided to wireless service provider
53	19-A	3012		Title 19-A, section 3012, relating to specific identifying information in child support enforcement

Existing Public Records Exceptions Subject to review by 2010

May 27, 2008

	Title	Section	Sub-section	Subject matter
54	19-A	4013	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel
55	19-A	651	2	Title 19-A, section 651, subsection 2, relating to social security numbers on marriage applications
56	19-A	908		Title 19-A, section 908, relating to social security numbers on divorce records
57	20-A	10206	2	Title 20-A, section 10206, subsection 2, relating to records of the Energy Testing Laboratory of Maine
58	20-A	11418	1, 2	Title 20-A, section 11418, subsections 1 and 2, relating to Maine Educational Loan Authority applicants and recipients
59	20-A	11444	1, 2	Title 20-A, section 11444, subsections 1 and 2, relating to the Student Financial Aid Supplemental Loan Program applicants and recipients
60	20-A	11494	1, 2	Title 20-A, section 11494, subsections 1 and 2, relating to the Higher Education Loan Purchase Program borrowers
61	20-A	13004	2	Title 20-A, section 13004, subsection 2, relating to certification and registration of teachers
62	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers
63	20-A	13015	5	Title 20-A, section 13015, subsection 5, relating to teacher action plans
64	20-A	13034		Title 20-A, section 13034, relating to teacher qualifying exam scores
65	20-A	4008	2	Title 20-A, section 4008, subsection 2, relating to school counselor or social worker activities
66	20-A	5001-A	3	Title 20-A, section 5001-A, subsection 3, relating to homeschooling records
67	20-A	6001	3	Title 20-A, section 6001, subsection 3, relating to students education records
68	20-A	6101	2	Title 20-A, section 6101, subsection 2, relating to school records concerning employees and applicants
69	20-A	6103	3	Title 20-A, section 6103, subsection 3, relating to school records concerning criminal history record checks of employees and applicants
70	20-A	6205		Title 20-A, section 6205, relating to standards and assessments of student performance
71	20-A	6357	1	Title 20-A, section 6357, subsection 1, relating to student immunization records
72	21-A	196		Title 21-A, section 196, relating to information contained electronically in the central voter registration system
73	21-A	22	3	Title 21-A, section 22, subsection 3, paragraph A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program

Existing Public Records Exceptions Subject to review by 2010

May 27, 2008

	Title	Section	Sub-section	Subject matter
74	21-A	22	3	Title 21-A, section 22, subsection 3, paragraph B, relating to residence and mailing address of voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized
75	21-A	22	2	Title 21-A, section 22, subsection 2, relating to ballots
76	21-A	22	5, 6	Title 21-A, section 22, subsections 5 and 6, relating to registered voter applications
77	21-A	22	3	Title 21-A, section 22, subsection 3, paragraph A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program
78	21-A	22	3	Title 21-A, section 22, subsection 3, paragraph B, relating to residence and mailing address of voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized
79	21-A	737-A	7	Title 21-A, section 737-A, subsection 7, relating to disputed ballots
80	21-A	764		Title 21-A, section 764, relating to applications and envelopes for absentee ballots
81	21-A	1003	3-A	<i>Title 21-A, section 1003, subsection 3-A, relating to investigative working papers acquired, prepared or maintained by the Commission on Governmental Ethics and Election Practices during an investigation or audit (PL 2007, c. 571)</i>
82	21-A	1125	3	<i>Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet (PL 2007, c. 571)</i>

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HOUSE OF REPRESENTATIVES

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Dawn Hill

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Residence: (207) 363-7594

May 2, 2008

Senator Barry Hobbins
Chair
Right to Know Advisory Committee
13 State House Station
Augusta, ME 04333

Dear Sen. Hobbins:

During the process of requesting information from the Maine Turnpike Authority (MTA) regarding their construction of a new toll plaza in York, it came to my attention that there is a statutory reference that prohibits public access to certain information relating to engineering estimates of costs for projects that involve the MTA or the Department of Transportation. The reference is found in 23 M.R.S.A. §63, which I've attached to this letter.

It is puzzling to me why there would be a statutory exemption for these engineering estimates. While I certainly understand the need for confidentiality during the bidding process, I am perplexed why this information could never be released to the public.

While I understand that the committee is not scheduled to review Title 23 until 2012, I am requesting that the Right to Know Advisory Committee examine this statutory reference and the possible public policy reasons behind the necessity for complete and forever confidentiality of this information. Please feel free to contact me with any questions you may have.

Sincerely,

Rep. Dawn Hill

cc: Members of the Right to Know Advisory Committee
Sen. Dennis Damon, Chair

Rep. Boyd Marley, Chair

Members of the Transportation Committee

Senator Peter Bowman

Representative Windol Weaver

✓ Peggy Reinsch, Policy and Legal Analysis

Theresa Savoy, Department of Transportation

Conrad Welzel, Maine Turnpike Authority

Title 23: HIGHWAYS
Part 1: STATE HIGHWAY LAW
Chapter 3: OFFICIALS AND THEIR DUTIES
Subchapter 1: DEPARTMENT OF TRANSPORTATION

§63. Records of right-of-way division confidential

The records and correspondence of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, and the records and data of the department and the Maine Turnpike Authority relating to engineering estimates of costs on projects to be put out to bid are confidential and may not be open for public inspection. The records and correspondence of the right-of-way divisions relating to negotiations for and appraisals of property must be open for public inspection after 9 months following the completion date of the project according to the record of the department or authority. Records of claims that have been appealed to the Superior Court must be open for public inspection following the award of the court. [2001, c. 158, §1 (RPR).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 2001, c. 158, §1 (RPR).

Maine State Legislature

Online Documents for LD 2291

S.P. 912 - An Act To Amend Teacher Confidentiality Laws

Bill Text	P.3
Fiscal Impact, Fiscal Note	
Final Disposition: ENACTED, Thu Apr 17, 2008 Governor's Action: SIGNED, Fri Apr 18, 2008	
This is an unofficial document that may contain errors. See the printed <i>Laws Of Maine</i> when available for a final version. Enacted Law: PUBLIC Law, Chapter 666 P.2	
Adopted Amendments: CCA H-1024, Text: Web Page, MS-Word Document, PDF Document	

Amendments to LD 2291

Filing Number	Amendment	Adopted By	Notes
S-577	C "A"		Fiscal Impact, Fiscal Note P.4
S-578	C "B"		Fiscal Impact, Fiscal Note pp.5-6
H-1024	CC "A"	House & Senate	Fiscal Impact, Fiscal Note → P.7
H-998	H "A" to C "A"		No Fiscal Impact, Fiscal Note → pp.8-9
Sponsored By: Representative SIMPSON of Auburn			
S-624	S "A" to C "A"		No Fiscal Impact, Fiscal Note → pp.10-11
Sponsored By: Senator MILLS P of Somerset			

If you would like a paper copy of a bill or amendment, contact the Document Room at 287-1408 or send an e-mail with the LD number, the Item number and a destination address to webmaster_house@legislature.maine.gov.

Additional Information

MR-ORCA/RTK-AL 5/21/08

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend Teacher Confidentiality Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

2-A. Complaints confidential. Complaints, charges or accusations made and investigated pursuant to section ~~13001~~13020, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification ~~shall be~~are confidential. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court ~~shall be~~are public records. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in this subsection as confidential.

Sec. 2. Study by Office of Policy and Legal Analysis. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall review and summarize the extent to which laws in other states and jurisdictions permit the dissemination of confidential information pertaining to denials, revocations, suspensions, surrenders and reinstatements of teaching certificates to applicants for teacher certification or recertification and for professional licenses or credentials for other comparable professions. In conducting this analysis, the Office of Policy and Legal Analysis shall review the apparent conflict between the confidentiality requirements placed on information received by the Commissioner of Education as set forth in the criminal history record check provisions of the Maine Revised Statutes, Title 20-A, section 6103 and the provisions set forth in Title 22, section 4011-A that require persons, when acting in a professional capacity, to report their knowledge or reasonable suspicions of the abuse or neglect of a child to the Department of Health and Human Services. The Office of Policy and Legal Analysis shall submit a report with findings to the Joint Standing Committee on Education and Cultural Affairs by November 5, 2008.

Effective 90 days following adjournment of the 123rd
Legislature, First Special Session, unless otherwise indicated.

Original bill

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend Teacher Confidentiality Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

2-A. Complaints confidential. Complaints, charges or accusations made and investigated pursuant to section 13001, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification ~~shall be~~ confidential. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court ~~shall be~~ public records. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in this subsection as confidential.

SUMMARY

This bill requires that the Department of Education report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to a national association of state directors of teacher education and certification.

Com Amend "A"

LD 2291, item 2, 123rd Maine State Legislature

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 1 in subsection 2-A in the 2nd line (page 1, line 5 in L.D.) by striking out the following: "13001" and inserting the following: '~~13001~~13020'

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Education and Cultural Affairs. The amendment corrects a cross-reference in the bill.

FISCAL NOTE REQUIRED

(See attached)

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed and the following enacted in its place:

2-A. Confidentiality. The provisions of this subsection govern confidentiality.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. If a complaint under section 13020 is based upon a criminal conviction or upon information that has become generally known to the public, the department may comment publicly on the existence and status of the complaint but shall otherwise preserve confidentiality in accordance with this subsection.

C. Access to confidential information under this subsection may be granted to the extent that relevant information is needed by:

(1) A national association of state directors of teacher education and certification to which the State belongs;

(2) Other public authorities that are considering reciprocal action or that are investigating a person's certification in another jurisdiction; or

(3) Law enforcement agencies in aid of their investigations.

D. This subsection may not prohibit the department from using or releasing relevant information as necessary:

(1) To investigate or prosecute complaints; or

(2) To report, curtail or prevent criminal conduct.

E. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.'

SUMMARY

This amendment, which is the minority report of the Joint Standing Committee on Education and Cultural Affairs, strikes and replaces the bill to accomplish the following.

1. It permits access to confidential information on denials, revocations and suspensions of teacher certification to the extent that the information is needed by a national association of state directors of teacher education and certification, in aid of an investigation by other jurisdictions investigating qualifications for certification or considering reciprocal disciplinary action or by law enforcement agencies in aid of an investigation.

2. It authorizes the Department of Education to comment publicly on the existence and status of a complaint when the complaint is based on a criminal conviction or upon information that has become generally known to the public.

3. It allows the Department of Education to use relevant information to investigate or prosecute complaints or to report, curtail or prevent criminal conduct.

4. It authorizes the Department of Education to disseminate as public information statistical summaries of complaints and dispositions as long as the dissemination does not jeopardize the confidentiality of individually identifiable information.

FISCAL NOTE REQUIRED

(See attached)

Conf. Com. "A"
Adopted

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 1 in subsection 2-A in the 2nd line (page 1, line 5 in L.D.) by striking out the following: "13001" and inserting the following: '~~13001~~13020'

Amend the bill by inserting after section 1 the following:

Sec. 2. Study by Office of Policy and Legal Analysis. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall review and summarize the extent to which laws in other states and jurisdictions permit the dissemination of confidential information pertaining to denials, revocations, suspensions, surrenders and reinstatements of teaching certificates to applicants for teacher certification or recertification and for professional licenses or credentials for other comparable professions. In conducting this analysis, the Office of Policy and Legal Analysis shall review the apparent conflict between the confidentiality requirements placed on information received by the Commissioner of Education as set forth in the criminal history record check provisions of the Maine Revised Statutes, Title 20-A, section 6103 and the provisions set forth in Title 22, section 4011-A that require persons, when acting in a professional capacity, to report their knowledge or reasonable suspicions of the abuse or neglect of a child to the Department of Health and Human Services. The Office of Policy and Legal Analysis shall submit a report with findings to the Joint Standing Committee on Education and Cultural Affairs by November 5, 2008.'

SUMMARY

This committee of conference amendment incorporates Committee Amendment "A", which corrects a cross-reference in the bill. The amendment also provides that, upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall review the laws in other states and jurisdictions related to the dissemination of confidential information pertaining to denials, revocations, suspensions, surrenders and reinstatements of teaching certificates to applicants for teacher certification or recertification and for professional licenses or credentials for other comparable professions. The Office of Policy and Legal Analysis shall also review the apparent conflict between the statutory provisions set forth in the Maine Revised Statutes, Title 20-A, section 6103 and Title 22, section 4011-A and submit a report to the Joint Standing Committee on Education and Cultural Affairs.

FISCAL NOTE REQUIRED
(See attached)

House "A" to Com
Amend "A"

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the amendment in the first paragraph after the title in the first and 2nd lines (page 1, lines 11 and 12 in amendment) by striking out the following: "in section 1 in subsection 2-A in the 2nd line (page 1, line 5 in L.D.) by striking out the following: "13001" and inserting the following: '1300+13020' " and inserting the following: 'by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed and the following enacted in its place:

2-A. Confidentiality. The provisions of this subsection govern confidentiality.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. If a complaint under section 13020 is based upon a criminal conviction or upon information that has become generally known to the public, the department may comment publicly on the existence and status of the complaint but shall otherwise preserve confidentiality in accordance with this subsection.

C. Except for information designated confidential under section 6102 or section 6103, the department may release relevant information that is designated confidential under paragraph A to:

(1) A national association of state directors of teacher education and certification to which the State belongs;

(2) Other public authorities that are considering reciprocal action or that are investigating a person's certification in another jurisdiction; or

(3) Law enforcement agencies in aid of their investigations.

D. This subsection may not prohibit the department from using or releasing relevant information as necessary:

(1) To investigate or prosecute complaints; or

(2) To report, curtail or prevent criminal conduct.



E. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.'

SUMMARY

This amendment accomplishes the following.

1. It permits access to confidential information on denials, revocations and suspensions of teacher certification to the extent that the information is needed by a national association of state directors of teacher education and certification, in aid of an investigation by other jurisdictions investigating qualifications for certification or considering reciprocal disciplinary action or by law enforcement agencies in aid of an investigation.
2. It authorizes the Department of Education to comment publicly on the existence and status of a complaint when the complaint is based on a criminal conviction or upon information that has become generally known to the public.
3. It allows the Department of Education to use relevant information to investigate or prosecute complaints or to report, curtail or prevent criminal conduct.
4. It authorizes the Department of Education to disseminate as public information statistical summaries of complaints and dispositions as long as the dissemination does not jeopardize the confidentiality of individually identifiable information.

Senate "A" to
Comm. Amend "A"

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the amendment by striking out everything after the title and before the summary and inserting the following:

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed and the following enacted in its place:

2-A. Confidentiality. The provisions of this subsection govern confidentiality.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. Except for information designated confidential under section 6101 or section 6103, information regarding a teacher designated confidential under paragraph A may be released or used by the department as necessary to:

(1) Complete its own investigations;

(2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

(3) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

(4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

(5) Report child abuse or neglect under Title 22, section 4011-A.

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.

SUMMARY

This amendment strikes and replaces the bill to accomplish the following.

1. It permits access to confidential information on denials, revocations and suspensions of teacher certification to the extent that the information is needed by a national association of state directors of teacher education and certification, in aid of an investigation by other jurisdictions investigating qualifications for certification or considering reciprocal disciplinary action or by law enforcement agencies in aid of an investigation.

2. It authorizes the Department of Education to disseminate as public information statistical summaries of complaints and dispositions as long as the dissemination does not jeopardize the confidentiality of individually identifiable information.



**INTERNSHIP PROPOSAL
RIGHT TO KNOW ADVISORY COMMITTEE
For Spring 2008**

The Right to Know Advisory Committee was created by the Legislature and charged with ensuring the integrity of the Freedom of Access laws and their underlying principles. The ongoing duties of the permanent Advisory Committee are listed in Title 1, the Maine Revised Statutes, section 411. The Legislative Council provides staff to the Advisory Committee through the Office of Policy and Legal Analysis, but only when the Legislature is not in Regular or Special Session. The extern will have the opportunity to provide direct staffing services to the Advisory Committee as well as assisting the Advisory Committee in carrying out its duties. The webpage for the Advisory Committee: <http://www.maine.gov/legis/opla/righttoknow.htm>.

The extern will work under the supervision of the Chief Deputy Attorney General, who currently serves as a member of the Right to Know Advisory Committee, in consultation with the Chair of the Advisory Committee. The extern may also act as liaison between the Advisory Committee and the Governor's Office, the designated FOA contact persons for state agencies and departments and organizations representing public officials.

General responsibilities may include analyzing policy and legal issues for the Advisory Committee, drafting legislation, conducting research and preparing study reports related to Freedom of Access laws in Maine and other states. The extern may act as liaison between the Advisory Committee and the Joint Standing Committee on Judiciary, as well as other committees of the Legislature, and their staff.

The Advisory Committee is currently committed to two projects with which the extern may assist.

- The first is review of existing public records exceptions. The Advisory Committee is required to review and make recommendations about the continuance, modification or repeal of statutory public records exceptions. The recommendations are to be considered by the Judiciary Committee of the Legislature during the Second Regular Session of the Legislature.
- The second project is establishing Freedom of Access training program criteria, establishing an approval process for training programs, and establishing and maintaining a process to track self-reporting completion information by elected official required to undergo such training.

Title 1, Maine Revised Statutes, Section 402, subsection 2, ¶ B related to public records exception for records within scope of privilege

1 §402, sub-§ 3, ¶ B states:

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

- A. Records that have been designated confidential by statute;
- B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;
- C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;
- D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;
- E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;
- F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;
- G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;
- H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee of a governmental entity, as defined in Title 14, section 8102, subsection 2, except that "public employee" does not include elected officials.

DEPARTMENT OF PUBLIC SAFETY'S SUGGESTED REVISIONS TO CLARIFY 1 MRSA, CHAPTER 13: Public Records and Proceedings
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Below please find a copy of 1 MRSA c. 13, sub-c. 1, §§ 401 – 410 that includes suggested amendments to those sections that our agency believes would improve and clarify the Maine Freedom of Access Act. Comments also are included in order to explain why a given amendment is being suggested.

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Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

Subchapter 1: FREEDOM OF ACCESS

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

1-B. Agency. "Agency" means a public governmental department, bureau, unit, authority, association, council, committee, board, task force, commission, or similar organization of the State of Maine, or of a county or municipality of the State of Maine.

1-C. Official. "Official" has the same meaning as "employee" as defined in Title 14, section 8102, subsection 1: "A person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials;

volunteer firefighters as defined in Title 30-A, section 3151; emergency medical service personnel; members and staff of the Consumer Advisory Board pursuant to Title 34-B, section 1216; members of the Maine National Guard but only while performing state active service pursuant to Title 37-B; sheriffs' deputies as defined in Title 30-A, section 381 when they are serving orders pursuant to section 3135; and persons while performing a search and rescue activity when requested by a state, county or local governmental entity, but the term "employee" does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

- A. The Legislature of Maine and its committees and subcommittees;
- B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees;
- C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;
- D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;
- E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; and
- F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter.

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of

these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute;

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

I. Juvenile records and reports of municipal fire departments regarding the

investigation and family background of a juvenile fire setter;

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) For the purposes of this paragraph "public employee" means an employee of a governmental entity, as defined in Title 14, section 8102, subsection 2, except that "public employee" does not include elected officials.

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

- A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;
- B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and
- C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.

COMMENT: The amendments in this section attempt to clarify the meaning of certain words used in Chapter 13, sub-Chapter 1. Amendments to other sections based on the amendments to this section are accordingly reflected in sections that follow.

§402-A. Public records defined (REPEALED)

§403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any public record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection.

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The ~~body or agency~~ or official holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

§404-A. Decisions (REPEALED)

§405. Executive sessions

Those ~~bodies or agencies~~ falling within this subchapter may hold executive sessions subject to the following conditions.

1. Not to defeat purposes of subchapter. ~~These~~ An executive sessions shall may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions ~~shall may be~~ finally approved at an executive sessions.

3. Procedure for calling of an executive sessions. ~~An E~~executive sessions ~~may~~ must be called ~~only~~ by a public, recorded vote of 3/5 of the members, present and voting, of such ~~bodies or agencies~~.

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

5. Matters not contained in motion prohibited. No ~~other~~ matters other than any identified in a motion to go into executive session may be considered ~~in~~ during that ~~particular~~ executive session.

6. Permitted deliberation. Deliberations on only the following matters may be conducted ~~in~~ during an executive sessions ~~on the following matters and no others:~~

A. Discussion or consideration of the hiring, employment, appointment, nomination, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual official or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated shall be permitted to be present at an executive session if ~~he~~ that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against ~~him~~ that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion shall be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, provided that:

(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire.

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the ~~body or~~ agency;

D. Discussion of labor contracts and proposals and meetings between a ~~public an~~ agency and its negotiators. The parties must be named before the ~~body or~~ agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between a ~~body or an~~ agency and its attorney concerning the legal rights and duties of the ~~body or~~ agency, pending or contemplated litigation, settlement offers and matters where the duties of the ~~public body's~~ agency's counsel to ~~his client the agency~~ pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.

F. Discussions of information contained in records made, maintained or received by a ~~body or an~~ agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a ~~body or an~~ agency for licensing, permitting or employment purposes; consultation between a ~~body or an~~ agency and any entity that provides examination services to that ~~body or~~ agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

§405-A. Recorded or live broadcasts authorized (REPEALED)

§405-B. Appeals (REPEALED)

§405-C. Appeals from actions (REPEALED)

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of ~~a body or~~ an agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the ~~body or~~ agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

§407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any ~~public official, employee or appointee.~~ The agency shall, except in case of probationary ~~employees~~officials, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof ~~shall~~ must be kept by the agency and made available to any interested member of the public who may wish to review it.

§408. Public records available for public inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official

may request written clarification regarding the public record or public records being requested, but in any case the agency or official must acknowledge receipt of the request within a reasonable period of time.

COMMENT: Currently a person may make a FOAA request of such breadth that, as a practical and legal matter, an agency's ability to respond to the request is extremely difficult.

This amendment would permit an agency or official to request written clarification regarding the public record or public records being requested so that the agency or official will be accurately informed about what public record or public records are being requested.

The amendment also would necessitate that an agency or official acknowledge receipt of the request within a reasonable period of time.

1-A. Copy medium. A person may request a copy of any public record.

A. If any public record exists in electronic or magnetic form, the person may request a copy of the public record or public records in a paper, electronic or magnetic medium.

B. An agency or official shall provide a copy of a public record or public records in the requested medium if:

1. The agency or official has the technological ability to produce the public record or public records in that medium;

2. The agency or official is not required to purchase any computer software, hardware, or data storage supplies in order to accommodate the request;

3. Providing a copy of the public record or public records does not violate the terms of a contractual agreement between the agency or official and a 3rd party;

4. An unreasonable burden would not be placed on the agency or official due to a need either to review the public record or public records to determine whether some or all of the information in it may be released publicly, or to redact information from the public record or public records that is protected by law; and

5. Providing the record in the requested medium is the most efficient and cost-effective means for the agency or official to do so.

COMMENT: This amendment would clarify that a requester may request a copy of public record or public records in a paper, electronic, or magnetic medium, and would require the copy of the public record or public records to be furnished in the requested medium if certain criteria are met.

2. Inspection, translation and copying scheduled. Inspection, translation and

copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record or public records sought.

3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying or printing the requested public record or public records, as well as for the costs for any data storage supplies that are used to make electronic copies of the requested public record or public records.

COMMENT: This amendment would clarify that a reasonable fee may be charged to cover the cost of printing a requested public record or public records, as well as for the costs for any data storage supplies that are used to make electronic copies of the requested public record or public records.

B. ~~The An~~ agency or official may charge a fee to cover the ~~actual~~ cost of searching for, retrieving, and compiling and reviewing the a requested public record or public records of not more than \$10 per hour ~~after the first hour of aggregate staff time per devoted to responding to a request.~~ Compiling the public record or public records includes reviewing and redacting confidential information.

COMMENT: This amendment would clarify that a reasonable fee may be charged to cover the cost of searching for, retrieving, compiling, and reviewing a public record or public records. The amendment also would clarify that the cost amount is based on the aggregate amount of time devoted by officials to respond to a request.

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.

D. An agency or official may not charge for inspection, but may charge a fee in accordance with paragraph B of this subsection if the public record or public records to be inspected must be sought, retrieved, compiled or reviewed in order for inspection to occur.

COMMENT: Currently FOAA prohibits an agency or official from charging a fee for an inspection of a public record or public records. This amendment would clarify that a fee may be charged to cover any cost incurred in order to find, retrieve, compile, and review a public record or

public records in order for the inspection to occur.

E. If a person requests that the public record or public records be sent by mail, the agency or official may charge a fee to cover the actual cost of mailing the public record or public records.

COMMENT: This amendment would clarify that an agency or official may charge a fee to cover the actual cost of mailing a public record or public records to a requester, if the requester asks that copies of the public record or public records requested be sent by mail.

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding continuing with the process of responding to the request. The requester must then notify the agency or official if the requester wants the agency or official to continue with the process of responding to the request. If the estimate of the total cost is greater than \$100, subsection 5 applies.

COMMENT: This amendment would require that, when the cost of responding to a request is estimated to exceed \$20, an agency or official must inform a requester of that estimate before continuing with the process of responding to the request. The amendment also would clarify that the requester, once so informed, must notify the agency or official that he or she wants the agency or official to continue with the process of responding to the request.

5. Payment in advance. ~~The~~ An agency or official may require a requester to pay all ~~or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling, review and copying of the public record or public records if~~ as follows:

~~A. The estimated total cost exceeds \$100; or—~~

~~B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner—~~

C. An agency or official may require a requester to pay an advance partial payment of up to \$20 when the estimated total cost to respond to the request exceeds that amount.

D. An agency or official may require a requester to pay an advance partial payment of up to \$10 when the estimated total cost to respond to a request is more than \$10 but less than \$20.

E. An agency or official may require a requester to pay advance full payment of up to \$10 when the estimated cost to respond to a request is less than \$10.

An agency or official also may require advance payment in full for any properly assessed outstanding fees owed by the requester with respect to any previous requests made by that person for a public record or public records. The agency or official may require that such payment in full be made first before any additional public records are released to the requester owing such properly assessed outstanding fees.

COMMENT: Currently FOAA permits an agency or official to require a requester to pay all or a portion of the estimated costs to respond to a request only if the estimated total cost exceeds \$100 or the requester has failed to pay a properly assessed fee related to a previous FOAA request. Consequently, an agency or official may diligently and completely respond to a request, make available for inspection and/or provide copies of a public record or public records to a requester, but then not ever recover from the requester any of the costs that were incurred to respond to the request because the two thresholds established in the current statute were not met. Sometimes such costs—though less than \$100—are substantial, and FOAA provides no legal mechanism for an agency or official to collect outstanding fees that are owed by a requester.

This amendment would permit an agency or official to require advance payment of estimated costs, as reflected in the amendment above. The amendment also would permit an agency or official to require advance payment in full of any properly assessed outstanding fees owed by the requester with respect to any previously made FOAA requests made by that person for a public record or public records. The agency or official may require that such payment in full be made before any additional public records are released to the requester owing such properly assessed outstanding fees.

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record or public records requested is in the public interest because it doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

§409. Appeals

1. Records. If any ~~body or~~ agency or official, ~~who has~~ having custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record or public records, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days ~~of the request for~~

~~inspection by any person after the agency or official has made a final determination that the request is denied in whole or part.~~ Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

COMMENT: Currently the FOAA requires that an agency communicate a denial of a FOAA request to the requester within five working days of the request for inspection. As a practical matter, and especially given the breadth of some FOAA requests, it is often difficult for an agency or official to search for and retrieve a requested public record or public records, let alone compile and review the public record or public records to determine whether such may be publicly released, within only 5 working days.

This amendment would require that an agency or official communicate to the requester the denial of a FOAA request within 5 working days after the agency or official has made a final determination that the request is denied in whole or part.

2. Actions. If any ~~body or~~ agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials ~~responsible~~ responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. Proceedings not exclusive. The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

§410. Violations

For every willful violation of this subchapter, the ~~state government agency or local government entity~~ agency whose ~~officer or employee~~ official committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2008 ME 69
Docket: Cum-07-522
Argued: November 28, 2007
Decided: April 24, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

BLETHEN MAINE NEWSPAPERS, INC.

v.

PORTLAND SCHOOL COMMITTEE

CLIFFORD, J.

[¶1] The Portland School Committee appeals from a judgment of the Superior Court (Cumberland County, *Cole, J.*) concluding that portions of an executive session held by the School Committee violated the Freedom of Access Act (FOAA), 1 M.R.S. §§ 401-412 (2007), and that certain notes taken during that session, and a document prepared for that session, are “public records” and therefore subject to public inspection. The School Committee contends that the Superior Court erred because the executive session was lawfully conducted pursuant to the FOAA, and that the court improperly ordered the release of those notes and that document. We agree with the contentions of the School Committee, and we vacate the judgment.

I. BACKGROUND

[¶2] On July 25, 2007, amidst controversy over a substantial school financial deficit, and after consulting with its attorney as to the legitimate purposes for which an executive session could be held, the School Committee voted to go into executive session, and met in executive session for about forty-five minutes. The agenda for the executive session was to “consult with counsel and consider the duties of central office staff with respect to the department’s financial management.” During the session, members of the Committee questioned the superintendent, the finance manager, and the human resources director, as well as their attorney.

[¶3] No recording was made of the executive session, and therefore no transcript of the proceedings is available. Attorney Harry R. Pringle, general counsel for the School Committee, advised the Committee during the process and participated in the executive session, taking approximately three pages of notes during the discussions. Two Committee members, Ellen Alcorn and Lori Gramlich, also took limited notes. The superintendent, Mary Jo O’Connor, presented her management philosophy, in a typewritten memorandum which had been prepared exclusively for the executive session.

[¶4] On July 26, 2007, Blethen Maine Newspapers, Inc. requested “all notes, transcripts, recordings, minutes or other documents reflecting the discussion

during the meeting as well as any documents distributed to or by Committee members or Department staff during the meeting,” pursuant to the FOAA. 1 M.R.S. § 408(1). On July 31, 2007, the School Committee, acting through its attorney, denied Blethen’s FOAA request to examine the documents. On that same day, after receiving the denial, Blethen filed a complaint against the School Committee seeking preliminary and permanent injunctive relief from what it asserted was an unlawful denial of access to public proceedings and public records in violation of the FOAA.

[¶5] On August 17, 2007, the Superior Court held a hearing, at which Attorney Pringle, Superintendent Mary Jo O’Connor, and School Committee member Benjamin Meiklejohn all testified about what occurred before and during the executive session. Attorney Pringle testified that prior to the executive session, and when School Committee members arrived at the session, he advised the Committee members of the purposes and limitations of the executive session set out in the FOAA. Attorney Pringle testified that he understood the purpose of the executive session was to review the duties of the staff of the School Department, and to discuss legal questions that could arise. Attorney Pringle further testified that there was a high probability that harm to the reputation of some of the senior staff could result from the session; that he was present to help the School Committee chair stay within the bounds of the purpose of the executive session,

and to answer legal questions that the Committee members had; that once or twice when Committee members began to talk about something that was inconsistent with the purpose of the executive session, namely how the Finance Committee might better operate, he or the chair called attention to the inappropriateness of that subject matter; that the purpose of the session was not to discuss the budget but was limited to personnel areas and consultation with counsel; that most of the discussion pertained to the staff and their roles in managing the finances of the School Department, and how well those responsibilities had been carried out; that there were questions as to what legal options the School Committee had concerning the employment of the School Department employees; and that there was no discussion of a solution to the financial shortfall, or of possible budget reductions or the need to recoup expenditures. Attorney Pringle testified that he took notes to remember what was said and done in the executive session, for possible use later in open session of the School Committee, and in preparation for litigation.

[¶6] Superintendent O'Connor testified that the purpose of the executive session was to clarify the rules and responsibilities of the staff in regard to fiscal management of the Portland School Department. She discussed her role as superintendent by reviewing a document she prepared in advance for purposes of the meeting, and testified that most of the meeting consisted of very direct

questions to the staff about the roles they played during the development of the budget and the fiscal shortfall.

[¶7] Committee member Benjamin Meiklejohn also testified. He had spent nearly six years on the School Committee and was the chair of the Finance Committee. He was not present when the School Committee voted to go into executive session, but did join the session later. He understood the purpose of the executive session was to consult with legal counsel and to discuss the duties of the staff. He testified that he asked questions as to how to correct the problem of the fiscal shortfall, but was cut off by Attorney Pringle. Meiklejohn testified that, as an individual School Committee member, he had always been reluctant to go into executive session, and that during his presence at the executive session there was no discussion of budget proposals, the status of the budget, or how to make up the fiscal shortfall.

[¶8] Two days after the executive session, Meiklejohn posted to his website that a reasonable expectation of damage to the reputation of the senior staff of the school department “most certainly did exist” going into the executive session, but that after the session, he no longer felt that expectation. *See* 1 M.R.S. § 405(6)(A)(1). The Superior Court relied on Meiklejohn’s website posting to shift the burden from Blethen, to show that there had been a violation of FOAA, to the School Committee, to demonstrate its compliance with the executive session

exception to the open meeting requirement of FOAA. *See Chase v. Town of Machiasport*, 1998 ME 260, ¶ 9, 721 A.2d 636, 639 (the party alleging a violation of the Act has the burden of producing probative evidence sufficient to support a finding that the Act has been violated); *see also Underwood v. City of Presque Isle*, 1998 ME 166, ¶¶ 18-19, 715 A.2d 148, 154 (discussing shifting the burden of proof from the party alleging the violation of the FOAA to the public body).

[¶9] Although the court acknowledged that some of the deliberations in the executive session dealt with personnel issues, a subject permissible for discussion in executive session, it found that some of the deliberations were about the School Committee budget and were impermissible under the FOAA. The court found that the Superintendent's statement about her management philosophy was a public record under the FOAA, and that the personal notes of the two Committee members, as the only notes from the executive session, were public records pursuant to the FOAA, and ordered their disclosure. The court also determined that certain portions of the notes taken by Attorney Pringle were privileged and not subject to public disclosure, but that other parts of the attorney's notes were public records and were subject to public disclosure, with the privileged portions of those notes redacted.

[¶10] The School Committee filed this appeal.

II. DISCUSSION

[¶11] The FOAA reveals a clearly expressed legislative intent that public proceedings be conducted openly, and that records of public proceedings be open to public inspection.

[¶12] Title 1 M.R.S. § 401 provides:

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

[¶13] The FOAA, however, does allow for executive sessions to be conducted by public bodies pursuant to 1 M.R.S. § 405(6). That section provides:

Deliberations may be conducted in executive sessions on the following matters and no others: **(A)** Discussion or consideration of the employment, . . . assignment, duties, promotion, demotion, . . . evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions: **(1)** An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated.

1 M.R.S. § 405(6)(A)(1). Section 405(6)(A) also provides, "This paragraph does not apply to discussion of a budget or budget proposal."

[¶14] The School Committee contends that the Superior Court committed clear error when it found that portions of the executive session involved a discussion of the budget and therefore, violated section 405(6)(A) of the FOAA. We agree. Although the evidence supports a finding that there were some questions raised regarding what the School Committee as a whole and in particular the Finance Committee could do to address the financial shortfall—a subject not appropriate for an executive session—those questions were few, and of short duration, and, at the direction of Attorney Pringle, were not answered.

[¶15] The overwhelming evidence, including the notes taken by those present, demonstrates that the overall purpose of the executive session was in compliance with section 405(6). All of the witnesses testified that a main purpose of the session was to inquire into the duties and responsibilities of the senior staff of the School Committee, and that the focus of the meeting complied with that purpose. The notes taken at the meeting corroborate that testimony. Moreover, because there was inquiry into the duties and responsibilities of staff personnel who have fiscal management responsibilities, in the face of an unexpected \$2.5 million financial shortfall that was not promptly brought to the attention of the School Committee and the public, a public discussion “could be reasonably expected to cause damage to the reputation[s]” of those who would come under scrutiny. 1 M.R.S. § 405(6)(A)(1). Although the website of School Committee

member Meiklejohn revealed his opinion that, as measured *after* the executive session, the reputations of the senior staff were not in danger, the time for that reasonable expectation to be measured is before the executive session is conducted, and not after its completion. Meiklejohn did agree that there was a reasonable expectation of damage to reputations of the senior staff people going into the executive session. Moreover, because the School Committee was faced with a recently disclosed and highly publicized \$2.5 million financial shortfall that had only recently been disclosed to the School Committee and to the public, the evidence, including the notes, reveal that much of the meeting was taken up with questions addressed to the employees, questions that were pointed and potentially damaging to the reputations of the employees present.

[¶16] The Superior Court, however, concluded that parts of the executive session violated the provisions of the FOAA. The court found that “some of the deliberations were regarding the school committee budget.” That finding is based on the language in section 405(6)(A) that provides that “[t]his paragraph [dealing with subject matters allowable in executive session] does not apply to discussion of a budget or budget proposal,” and is consistent with Blethen’s argument to the Superior Court, and on appeal, that the “discussions of the budget” language should be construed to mean that *any* discussion of matters dealing with finances is prohibited in an executive session. We disagree with that construction. Although

the FOAA is to be interpreted liberally to favor open meetings, 1 M.R.S. § 401; *Moffett v. City of Portland*, 400 A.2d 340, 347-48 (Me. 1979), construing the language of section 405(6)(A) as prohibiting *any* discussion of matters dealing with school finances in an executive session would lead to the absurd result that there never could be a discussion in executive session about personnel whose responsibilities are fiscal or monetary, or whose jobs impact a budget in any way, even when such discussion could reasonably be expected to cause damage to the reputation or violate the privacy of the individual involved.¹ We reject such an expansive interpretation of section 405(6)(A) that ignores the policy clearly expressed in FOAA protecting against damage to reputation and violation of privacy rights of government employees. Such a construction would deny the protection given by the statute to employees who have fiscal or monetary responsibilities. Discussing the performance of such employees, and why the shortfall was allowed to happen, and why it was not brought to the attention of the School Committee, which is what the evidence discloses what was talked about in the executive session, does not amount to discussions of the budget or budget deliberations within the meaning of section 405(6)(A).

¹ The Superior Court improperly concluded that the times during the executive sessions, reflected in the notes of Attorney Pringle, referring to questions asked of the employees about fiscal matters, amounted to budget discussions prohibited by 1 M.R.S. § 405(6)(A) (2007).

[¶17] No witness testified that there was any discussion of the school budget in the executive session conducted by the School Committee. Before going into executive session, the School Committee was instructed on the FOAA and that discussion of the budget was not allowed, and that the purposes of the session were to allow the School Committee to inquire into and be informed about the duties and job responsibilities of the senior staff of the School Department, and get answers to legal questions. The notes taken during the session corroborate the testimony that neither the budget nor budget policy was discussed. Although there were a few questions by School Committee members inquiring as to the steps to be taken to correct the deficit problem, the evidence shows that Attorney Pringle made clear that such subjects were not appropriate, and the discussion was redirected to the permissible topics of the executive session, i.e., the duties of the senior staff in relation to the \$2.5 million shortfall, how it came about, and why it did not come to light.

[¶18] Because the executive session was lawful, documents prepared for use during the executive session and notes made during the executive session are not subject to public examination. Neither the definition of "public records" nor the exception for executive sessions address the treatment of documents prepared for or notes taken in connection with a legal executive sessions. Nonetheless, because the public was legitimately excluded from the executive session, the

memo prepared for and notes taken during such session are not public records and are not open to public inspection.² To hold otherwise would produce an absurd and illogical result. *See Cyr v. Madawaska Sch. Dep't*, 2007 ME 28, ¶ 9, 916 A.2d 967, 970 (stating that if the statute's meaning is clear, the Court does not look beyond its words, unless the result is illogical or absurd).

The entry is:

Judgment vacated. Remanded to the Superior Court for entry of judgment in favor of the Portland School Committee.

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² Had the memorandum outlining the management style of the Superintendent not been produced exclusively for the executive session, its contents would clearly not be protected information.

Calendar for year 2008 (United States)

January						
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Holidays and Observances:

Jan 1 New Year's Day
 Jan 21 Martin Luther King Day
 Feb 14 Valentine's Day
 Feb 18 Presidents' Day
 Mar 23 Easter Sunday

May 26 Memorial Day
 Jul 4 Independence Day
 Sep 1 Labor Day
 Oct 13 Columbus Day
 Oct 31 Halloween

Nov 4 Election Day
 Nov 11 Veterans Day
 Nov 27 Thanksgiving Day
 Dec 25 Christmas Day

Calendar generated on www.timeanddate.com/calendar

